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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,102	12/18/2001	Alan W. Peters	W9003-04	4840

7590

11/20/2002

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EXAMINER

YILDIRIM, BEKIR L

ART UNIT

PAPER NUMBER

1764

DATE MAILED: 11/20/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/022,102

Applicant(s)

PETERS ET AL.

Examiner

Bekir L. YILDIRIM

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 6,165,933. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to essentially the same subject matter varying in merely the scope of the claims, i.e. broadening of the subject matter through the elimination of some of the numerical ranges. It would have been obvious to modify the scope by including or excluding the presence of non-essential components..

3. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasalos et al. (USP 4,153,535).

The reference discloses an FCC catalyst comprising a cracking component and a component, which is deemed based on the totality of the disclosure to function as the combustion promotion component, which comprises the applicant's components including palladium, rare earth metal oxides and alkali metals, e.g. sodium, in overlapping proportions with those of the claims. The combustion component may be in the same particle as the cracking component or in separate particles (see col. 4, lines 18-40, 65-68; col. 5, lines 1-17, 35-43; col. 8, lines 13-28; col. 14, lines 32-61).

It is acknowledged that the reference does not disclose the exact amount ranges in the applicant's claims and that the reference does not disclose the specific combinations disclosed in the claims. The invention as a whole however would have been obvious to one having ordinary skill in the art because the selection of a combination from the limited number of combinations disclosed in the reference, or the determination of the workable range of the metal components would have been within the ordinary skill. See In re Aller, Lacey, and Hall, 105 USPQ 233 (CCPA 1955) In re Swain et al., 33 C.C.P.A. (Patents) 1250, 156 F.2d 239, 70 USPQ 412 ; Minnesota Mining and Mfg. Co. v. Coe, 69 App. D.C. 217, 99 F.2d 986, 38 USPQ 213 ; Allen et al. v. Coe, 77 App. D. C. 324, 135 F.2d 11, 57 USPQ 136 .


Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bekir L. YILDIRIM whose telephone number is (703) 308-3586. The examiner can normally be reached on 10:30-8:00 (alternating Mondays off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (703) 308-4311. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3599 for regular communications and (703) 872-9467 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-0611.

BLY
November 18, 2002


Bekir L. Yildirim
Primary Examiner